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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
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10 THE UNITED STATES OF AMERICA,)
11)
12 Plaintiff,) No.: 2:19-cv-0231-JCC
13)
14 v.)
15)
16 TRIDENT SEAFOODS CORP.,)
17 Royal Viking, Inc., Golden Dawn, LLC)
18)
19 Defendants.)
20 _____)
21

22 **FIRST MATERIAL MODIFICATION TO CONSENT DECREE**
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24 WHEREAS the United States of America and Defendants Trident Seafoods
25 Corporation (“Trident”), Royal Viking, Inc., and Golden Dawn, LLC (collectively, “the
26 Parties”) are Parties to a Consent Decree (ECF No. 2-1) entered by this Court on May 20,
27 2019 (ECF No. 8);

28 WHEREAS, Section VI of the Consent Decree describes the process and timelines by
29 which Defendants must retrofit or retire Large Appliances with a full charge of 5,000 pounds
30 or more of Class I or Class II refrigerant. Each Large Appliance that is retrofitted must be
31 retrofitted to use an “exempt substitute,” as defined in 40 C.F.R. §§ 82.152 and 82.154(a)(1),
32 in accordance with the schedule set forth in Paragraph 46:
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Retrofit or Retirement Date	Vessel
By January 31, 2022	Either the <i>Independence</i> or the <i>Island Enterprise</i>
By January 31, 2024	<i>Eastern Wind</i>
By January 31, 2026	Both the <i>Independence</i> and the <i>Island Enterprise</i>
By January 31, 2029	<i>Seattle Enterprise</i> and <i>Kodiak Enterprise</i>

WHEREAS, on January 15, 2022, Defendants retrofitted the *Island Enterprise*;

WHEREAS, on December 20, 2021, Defendants acquired the *Starbound*, a catcher/processor vessel with Large Appliances containing a full charge of over 5,000 pounds of refrigerant;

WHEREAS, on April 11 and April 20, 2023, Defendants notified the United States Environmental Protection Agency (“EPA”) about a fire that occurred on April 8, 2023, on the *Kodiak Enterprise*, one of Defendants’ catcher/processor vessels subject to Paragraph 46 of the Consent Decree. At that point, the scope of damage to the vessel and its refrigerant systems was yet-to-be-determined;

WHEREAS, on June 27, 2023, Defendants notified EPA that the fire on the *Kodiak Enterprise* resulted in a constructive total loss of the vessel, noting that “neither the vessel nor the onboard refrigeration system will ever be used again;”

WHEREAS, the fire on the *Kodiak Enterprise* resulted in the release of approximately 18,800 pounds of a Class I or Class II refrigerant;

WHEREAS, Defendants’ June 27 notification described cascading effects of having one less catcher/processor vessel, including to Defendants’ fishing and repair schedule, and thus requested an amendment to Paragraph 46’s schedule;

1 WHEREAS, Defendants contend that the *Kodiak Enterprise* was one of
2 Defendants' four catcher/processors, that Defendants depend on those vessels for a
3 significant portion of their revenue, and that the loss of the *Kodiak Enterprise* will
4 necessitate an increased workload on, and maintenance of, Defendants' other vessels,
5 which will affect Defendants' ability to retrofit vessels under the schedule in the Consent
6 Decree;

7 WHEREAS, Plaintiffs contend that the Consent Decree requires Defendants to retrofit
8 the Large Appliances on the *Starbound*;

9 WHEREAS, Defendants contend that the Consent Decree does not require the retrofit
10 of the Large Appliances on the *Starbound*, but have agreed to retrofit those appliances
11 according to the schedule below;

12 WHEREAS, in July and August 2023, the Parties discussed Defendants' request and
13 negotiated a modification to the schedule laid out in the below proposed Paragraph 46;

14 WHEREAS, this First Material Modification made herein constitutes a material
15 change to the Consent Decree, requiring Court approval under Paragraph 154 of the Consent
16 Decree because (1) the deadlines to retrofit the *Seattle Enterprise* and the *Eastern Wind* have
17 been extended by one and two years, respectively; and (2) a new vessel, the *Starbound*, has
18 been added to the Consent Decree with its own compliance schedule that extends the overall
19 deadlines in Paragraph 46 by three years;

20 WHEREAS, the Parties recognize, and the Court by entering this First Material
21 Modification finds, that this Modification has been negotiated by the Parties in good faith and
22 that this Modification is fair, reasonable, and in the public interest;

23 NOW THEREFORE, with the consent of the Parties, IT IS HEREBY ADJUDGED,

1 ORDERED, AND DECREED as follows:

2 1. Except as specifically modified herein, all provisions of the Consent Decree
3 entered by this Court on May 20, 2019 (ECF No. 8) shall remain unchanged and in full force
4 and effect. Furthermore, this Modification does not resolve any claim the United States may
5 have (or affect any defenses that Defendants may have) for stipulated penalties under Section
6 XIII of the Consent Decree for any violations that may have occurred in connection with the
7 fire on the *Kodiak Enterprise* and the related release of Class I or Class II refrigerant which
8 occurred in 2023.”

9 2. On December 20, 2023, Defendants certified, in accordance with the
10 certification language set forth in Paragraph 96 of the Consent Decree, that the *Kodiak*
11 *Enterprise* and its Large Appliances have been permanently rendered inoperable.

12 3. The schedule set forth in Paragraph 46 shall be replaced with the following:
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Retrofit or Retirement Date	Vessel
By January 31, 2022	<i>Island Enterprise</i>
By January 31, 2026	Both the <i>Eastern Wind</i> and the <i>Independence</i>
By January 31, 2030	<i>Seattle Enterprise</i>
By January 31, 2032	<i>Starbound</i>

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15 4. The effective date of this Modification shall be the date upon which this
16 Modification is entered by the Court or the motion to enter this Modification is granted,
17 whichever occurs first, as recorded on the Court’s docket.

18 5. This Modification shall be lodged with this Court for a period of at least thirty

1 (30) days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United
2 States reserves the right to withdraw or withhold its consent if the comments regarding this
3 Modification disclose facts or considerations indicating that this Modification is
4 inappropriate, improper, or inadequate. Defendants consent to entry of this Modification as
5 proposed without further notice and agree not to withdraw from or oppose entry of this
6 Modification by the Court or to challenge any provision of this Modification, unless the
7 United States has notified Defendants in writing that the United States no longer supports
8 entry of this Modification.

9 6. Each undersigned representatives of the Assistant Attorney General for the
10 Environment and Natural Resources Division of the United States Department of Justice, on
11 behalf of the United States, certifies that he is fully authorized to enter into the terms and
12 conditions of this Modification and to execute and legally bind the Party he or she represents
13 to this Modification.

14 7. This Modification to the Consent Decree constitutes the final, complete, and
15 exclusive agreement and understanding among the Parties with respect to this Modification to
16 the Consent Decree, and this Modification supersedes all prior agreements and
17 understandings, whether oral or written, concerning the Modification embodied herein.

18 8. This Modification may be executed in counterparts, and its validity shall not
19 be challenged on that basis.

1 Dated and entered this 14th day of June 2024.

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JOHN C. COUGHENOUR
4 SENIOR UNITED STATES DISTRICT JUDGE

Respectfully submitted,

TODD KIM
Assistant Attorney General
U.S. Department of Justice
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27 FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 10
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30 **BEVERLY LI** Digitally signed by BEVERLY LI
31 BEVERLY LI Date: 2024.02.05 09:13:53
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29 FOR DEFENDANTS TRIDENT SEAFOODS CORPORATION, ROYAL VIKING, INC., and
30 GOLDEN DAWN, LLC:
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